
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

)
)
)
)
)
)
)

Classic Car Service Corporation
Licensee of WQAX267 and WQAA328
Astoria, NY

File Number: EB-04-NY-215

NAL/Acct. No: 200532380003

FRN: 0005 1512 12

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 17, 2005

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Classic Car Service Corporation ("Classic"), d/b/a Paisa Classic Car Service, Corp, licensee of stations WQAX267 and WQAA328, in Astoria, NY, apparently willfully and repeatedly violated Section 1.903(a) of the Commission's Rules ("Rules")¹ by operating radio transmitting equipment on an unauthorized frequency of 31.02 MHz. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Classic is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On July 30, 2004, the New York Office received a complaint of interference allegedly coming from a car service in Astoria, NY.

3. On August 12, 2004, while investigating the interference complaint, Commission agents identified transmissions on 31.02 MHz and 160.155 MHz coming from a nearby car service. Agents, using a mobile direction-finding vehicle monitored the frequencies 31.02 MHz and 160.155 MHz, and determined that the transmissions were coming from Classic Car Service, d/b/a Paisa Classic Car Service, located at 38-12 Astoria Blvd, Astoria, NY 11104.

4. The agents conducted a station inspection with the owner of the station, Marcelo Rodriguez, and confirmed that there were base stations operating on the frequencies 31.02 MHz and 160.155 MHz. The agents also determined that Classic operated mobile units on the frequencies 31.02 MHz and 160.155 MHz.

5. A review of the Commission's database revealed that Classic has authorization to operate a base station and mobile units on 160.155 MHz under license WPTN612. Classic also has authorization to operate a base station and mobile units on 30.96 MHz pursuant to license WQAX267. The agents determined, however, that the license to operate on the frequency 31.02 MHz, which was held by New Paisa Car Service, Inc., expired March 26, 2003. A Commission agent gave Mr. Rodriguez a verbal

¹47 C.F.R. § 1.903(a).

²47 U.S.C. § 503(b).

warning that the base station and mobile units were operating on an unauthorized frequency of 31.02 MHz.

6. On August 18, 2004, and August 23, 2004, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency, 31.02 MHz, and again observed transmissions coming from Classic Car Service, located at 38-12 Astoria Blvd, Astoria, NY 11104.

7. On August 25, 2004, the New York Office sent a Notice of Violation to Classic for operation on an unauthorized frequency of 31.02 MHz, in violation of Section 1.903(a) of the Commission's Rules. The Notice of Violation sent via certified mail was returned to the New York Office by the U.S. Postal Service as signed for and dated on August 26, 2004. The New York Office did not receive a reply to the Notice of Violation.

8. On September 13, 2004, a Commission agent using a mobile direction-finding vehicle, monitored the frequency, 31.02 MHz, and again observed transmissions coming from Classic Car Service, located at 38-12 Astoria Blvd, Astoria, NY 11104.

9. On September 15, 2004, the New York Office received a fax from Mr. Rodriguez stating that Classic had made all the necessary adjustments and that it currently is operating on the frequency 30.96 with an output power of 110 watts.

10. On November 2, 2004, a Commission agent conducted a station inspection with the Mr. Rodriguez, and confirmed that there were base stations operating on the frequencies 30.96 MHz and 160.155 MHz.

III. DISCUSSION

11. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁴

12. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service, and with a valid authorization granted by the Commission. On August 12, 2004, a Commission agent determined that Classic was operating a base station and mobile units on 31.02 MHz without authorization. On that same day, the agent gave Mr. Rodriguez, the owner of Classic, an oral warning that he was operating on the unauthorized frequency of 31.02 MHz. Notwithstanding the warning, FCC agents observed Classic operating on 31.02 MHz on August 18, 2004, August 23, 2004, and September 13, 2004.

³Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

13. Based on the evidence before us, we find that Classic apparently willfully and repeatedly violated Section 1.903(a) of the Rules by operating a base station and mobile units on an unauthorized frequency of 31.02 MHz.

14. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for using an unauthorized frequency is \$4,000.⁵ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$4,000 forfeiture is warranted.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Classic Car Service is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violation of Section 1.903(a) of the Rules.⁷

16. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Classic Car Service **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

18. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014, within thirty (30) days from the release date of this Notice of Apparent Liability for Forfeiture and must include the NAL/Acct. No. referenced in the caption.

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th

⁵12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁶47 U.S.C. § 503(b)(2)(D).

⁷47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 1.903(a).

Federal Communications Commission

Street, S.W., Washington, D.C. 20554.⁸

21. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Classic Car Service at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office
Northeast Region
Enforcement Bureau

⁸See 47 C.F.R. § 1.1914.